

Looking Ahead to 2023

December 28, 2022

As the new year is fast approaching, we're waiting with bated breath for Prince Harry's new book, the Rugby World Cup, *Doctor Who's* 60th anniversary and of course, the potential UK employment law developments that financial services firms should be aware of in 2023.

Although the Government did not bring forward the much-anticipated Employment Bill in 2022, several proposals that were expected to form part of this Bill may now become law by way of separate legislation. There will also be the usual set of rate changes (such as an increase in the national minimum wage) that will take effect in April 2023.

Here are a few things to look out for in 2023:

The SMCR – Is it fit (and proper*) for purpose?

As part of the post-Brexit financial services reforms, the Government is considering reforming the Senior Managers and Certification Regime (SMCR). The Government will launch a Call for Evidence on the framework underpinning the SMCR focusing on the SCMR's effectiveness, scope and proportionality, and seek industry views on potential reforms. In parallel, the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) will also review the SMCR's regulatory framework. The potential reforms will likely raise concerns for firms given the time, money and effort that has already been spent on implementing the new regime.

A whole new GDPR? (Crikey!)

There have been discussions regarding the potential replacement of the UK General Data Protection Regulation (GDPR). If enacted, the Data Protection and Digital Information Bill would amend the current data protection and privacy framework.

The Information Commissioner's Office (ICO) is currently consulting on monitoring at work and information about workers' health. Both consultations close in January 2023. It will be interesting to see whether the ICO implements any changes to its guidance based on the consultation responses.

The end of EU law...

As currently drafted, the Retained EU Law (Revocation and Reform) Bill provides that retained EU law will expire on 31 December 2023 unless express legislation is introduced to preserve it. There is potential for the expiry date to be extended. The implications of this Bill are significant, and many employment areas may be impacted including working time, paid holidays, laws protecting fixed-term and part-time workers and agency workers.

Flexible working rights – Are we becoming too flexible?

The Employment Relations (Flexible Working) Bill will amend the existing rules. The Bill proposes to (i) extend the statutory right to request flexible working to all employees from day one; (ii) permit two requests a year from an employee; and (iii) require employers to consult with employees before refusing a request.

News rules on fire and rehire

Following some high profile corporate redundancies in March 2022, the Government proposed a new Statutory Code of Practice on dismissal and re-engagement.

Enhancing family-related rights

Carer's Rights: The Government announced support for the Carer's Leave Bill, which will introduce a right for carers to take a week's unpaid leave in a 12-month period to care for a dependant with a long-term care need.

The Neonatal Care: The Neonatal Care (Leave and Pay) Bill will entitle employees whose child receives neonatal care to a right to leave and pay. The Bill provides for a minimum of one week's leave but this could be extended.

Enhanced Pregnancy Rights: The Protection from Redundancy (Pregnancy and Family Leave) Bill will extend protection from redundancy to those who are pregnant, and for an 18 month period after an employee returns from maternity, adoption and/or shared parental leave.

The Fertility Treatment: The Fertility Treatment (Employment Rights) Bill will require employers to allow employees to take time off for fertility treatment appointments. The Miscarriage Leave Bill will also entitle employees to three days paid leave where they experience miscarriage, ectopic pregnancy or molar pregnancy before 24 weeks.

Out with the old and in with the new Bill of Human Rights

On 22 June 2022, the Government introduced the Bill of Rights, which aims to repeal the Human Rights Act 1998 and create a new domestic human rights framework. Although it was then reported that the Bill was dropped and other legislative options for reform were being explored, it was reported on 7 November 2022 that the Bill will return to parliament shortly.

Discrimination and harassment rules tightened

The Government advised that it was supporting the Worker Protection (Amendment of Equality Act 2010) Bill. This Bill proposed to (i) create employers' liability for harassment of employees by third parties; (ii) introduce a duty on employers to take all reasonable steps to prevent sexual harassment of employees; and (iii) provide for a compensation uplift in sexual harassment cases where there has been a breach of the employer's duty.

Working time and annual leave – Another new ruling...

The Supreme Court judgment in *Chief Constable of the Police Service of Northern Ireland v Agnew* regarding holiday pay will be handed down. The case will determine whether a series of unlawful deductions from pay is broken where the alleged deductions are more than three months apart.

Strike measures – The Government fights back

The Transport Strikes (Minimum Service Levels) Bill will provide for minimum transport service levels in connection with strike action. The Government is considering extending this measure to other public services and introducing further measures to deter industrial action in the public sector.

Additional bank holiday (again!)

While we reflect on whether the biggest event of 2023 may actually be the Coronation of King Charles III or the extra bank holiday on 8 May 2023 to mark this historic event, employers will have to grapple with potential issues related to determining whether they should give staff the extra day off.

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12/28/22